

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

RODNEY OTIS BURTON, )  
# 175034, )  
Petitioner, )  
v ) Civil Action No. 2:08cv203-MHT  
GARY HETZEL, WARDEN, et al., )  
Respondents. )

**O R D E R**

On May 14, 2008 (Doc. No. 11), Petitioner filed a response to Respondents' answer in which he claims that because the Alabama courts have determined that a § 13A-5-9.1 motion reopens a case at the sentencing stage, *see Prestwood v. State*, 915 So. 2d 580, 583 (Ala. Crim. App. 2005), proceedings on a § 13A-5.9.1 motion constitute a "critical stage" where the right to counsel attaches. Accordingly, it is

ORDERED that on or before June 9, 2008, Respondents shall file a supplemental answer that addresses Petitioner's specific claim in this regard.

Done this 16<sup>th</sup> day of May, 2008.

/s/Charles S. Coody  
CHARLES S. COODY  
UNITED STATES MAGISTRATE JUDGE